

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN DOES A, B, C, D, E, F, G, H,  
MARY DOE and MARY ROE, on  
behalf of themselves and all others  
similarly situated,

No. 2:22-cv-10209

Plaintiffs,

HON. MARK GOLDSMITH

v

MAG. CURTIS IVY, JR.

GRETCHEN WHITMER, Governor  
of the State of Michigan, and COL.  
JOSEPH GASPER, Director of the  
Michigan State Police, in their  
individual capacities,

**DEFENDANTS' STATEMENT  
REGARDING  
APPOINTMENT OF CLASS  
COUNSEL**

Defendants.

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## **DEFENDANTS' STATEMENT REGARDING APPOINTMENT OF CLASS COUNSEL**

Under the Rules, the parties and the Court have an obligation to secure a “just, speedy and *inexpensive* determination of every action and proceeding.” Fed. R. Civ. P. 1. (emphasis added). Here, because the relief being sought is declaratory and injunctive relief, most of the potential expenses in this litigation are going to related to attorney fees.

During the April 8, 2022, status conference there were eight attorneys in attendance representing plaintiffs. Only three plaintiffs’ attorneys actively participated in the 45-minute conference. Based on attorney rates from recent cases with many of the same attorneys, the approximate fees generated during the call were \$2,700. This was a simple status conference, yet there were five plaintiffs’ attorneys in attendance that did not play an active part.

Under 42 U.S.C 1988 prevailing parties may be entitled to attorney fees. 42 U.S.C 1988. However, courts have noted that “[c]ases may be overstaffed. . . the prevailing party should make a good faith effort to exclude . . . hours that are excessive, redundant, or otherwise unnecessary.” *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983).

If plaintiffs end up prevailing, which they should not, and attorney fees are awarded under 42 U.S.C 1988, the fees will be exorbitant if the same practice is allowed to continue. More importantly, such practices provide no measurable benefit to the plaintiffs. Allowing two groups of plaintiffs' attorneys to work together on the litigation seems to be an open invitation for excessive, redundant, and unnecessary billings, which will only lead to more litigation in the future.

In the preceding cases related to the Constitutionality of the old SORA, many similar cases were dismissed or stayed because the claims were subsumed in the class action. The undersigned counsel is currently handling state cases that are challenging the new SORA, which judges have *sua sponte* held in abeyance pending the outcome of this case.

Defendants support a case management order that protects against overstaffing and promotes a speedy and inexpensive determination of the matter. The Court may wish to provide guidance regarding staffing to protect against potential abuses, such as:

- Appointing a single group of attorneys to represent the class;

- Setting limits on how many plaintiffs' attorneys may be present for court conferences, calls with opposing counsel, depositions, trial and other proceedings;
- Direction regarding using senior attorneys for tasks that may be more suitable for less senior attorneys (e.g., a senior attorney does not need to be billing at the highest rates to draft a stipulation to extend dates);
- Set ranges for hourly charges for particular attorneys on the case, and permissible charges for travel time; and
- A requirement that plaintiffs counsel submit periodic reports related to hours billed on the case.

The Court has wide discretion in how it handles the appointment of counsel. Defendants don't take a substantive position on the many options available to the Court but are primarily concerned with ensuring a speedy and inexpensive resolution to the case.

Once the Court determines how to proceed with the class actions, Defendants should be afforded a reasonable amount of time to respond to the complaint and the pending preliminary injunction motion.

Respectfully submitted,

/s/ Eric M. Jamison

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Dated: April 22, 2022

## CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2022, I caused the above documents to be electronically filed with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Eric M. Jamison

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